

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**JUSTIN GUY**, individually on behalf  
of himself and others similarly situated,

Plaintiff,

v.

**ABSOPURE WATER COMPANY, LLC**,  
a domestic limited liability company,

Defendant.

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Case No.: 20-cv-12734

Hon. Mark A. Goldsmith

**PLAINTIFF'S SUPPLEMENTAL MEMORANDUM REGARDING THE  
SMALL VEHICLE EXCEPTION'S ANALYSIS**

Plaintiff, Justin Guy, on behalf of himself and the finally certified class of Opt-in Plaintiffs, hereby submits this memorandum pursuant to the Court's instructions at the December 4, 2023 Hearing, and states as follows.

The motor vehicles used by the employee must weigh at least 10,001 pounds for the MCA exemption to apply. 49 C.F.R. § 390.5. The small vehicle exception to the MCA exemption is a *de minimis* exception and drivers who operate small vehicles for 1% or more of their routes satisfy the threshold. *Oddo v. Bimbo Bakeries U.S.A., Inc.*, 391 F. Supp. 3d 466, 474 (E.D. Pa. 2019) (holding that plaintiffs satisfied the *de minimis* threshold to collect overtime under the small vehicle exception **because they drove small vehicles for 1% or more of their trips**)

(emphasis added). “Recent cases involving the small vehicle exception have also hued closely to this 1% threshold.” *See Id.* at 473 (collecting cases). Courts in this Circuit apply the *de minimis* standard. *See Byers v. Care Transp. Inc.*, No. 13-cv-15174, 2015 WL 5608287, at \*8 (E.D. Mich. Sept. 24, 2015). Critically, this Court and others routinely find that the *de minimis* standard is measured over the entirety of a drivers employment (i.e. by using an and not on a week-by-week) and the Parties have likewise stipulated that the measure held sufficient by the Court likewise applies to all of the Opt-in Plaintiffs. *See* ECF No. \_\_\_\_ (the Stipulation).

Specifically, this Court has already ruled that Plaintiff's small vehicle driving was more than *de minimis*, because he drove small vehicles two times per month, or roughly 9% of his routes. *See* ECF No. 109, PageID.4705. Thus, “Guy has shown that his work involving small vehicles was beyond a trivial or insignificant level of his work duties. *Id.* at PageID.4706; *see also Byers*, 2015 WL 5608287, at \*8 n. 11 (application of the small vehicle exception applies once the *de minimis* concept is met). As such, any Opt-in who drives small vehicles for more than a *de minimis* amount of their routes – twice per month – meets the small vehicle exception. *See id.* Such reasoning is in line with *Minor v. Cent. Forest Prod., Inc.*, No. 3:19-CV-01631-CLS, 2021 WL 1102437, at \*16 (N.D. Ala. Mar. 23, 2021) (Plaintiffs who transport property as a driver of a service vehicle or provide services to customers fall within the Small Vehicle Exception).

Such reasoning also serves the public policy considerations of the FLSA. A workweek basis analysis would allow employers to skirt FLSA liability by gaming the employee's small vehicles routes. Moreover, a week-by-week analysis as urged by Defendant would be impracticable, especially where Defendant acknowledges that it failed to maintain full and accurate records regarding the type of vehicle each Plaintiff drove each day. Thus, a longer-term perspective, such as a monthly or quarterly evaluation, the actual proportion of small vehicle use can be accurately assessed. It would also lend more ease and credibility to employees who provide estimates, thereby fulfilling the purpose of the FLSA.

For these reasons, the Court should enforce the Parties' stipulation that any Opt-in Plaintiff who drove/drives small vehicles on more than a de minimis amount of their routes – twice per month – meets the small vehicle exception.

Respectfully submitted,

Dated: December 5, 2023December 5, 2023

/s/ Michael N. Hanna

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on December 5, 2023, the foregoing document was filed using the CM/ECF system, which will send notice of same to all counsel of record.

/s/ Michael N. Hanna

Michael N. Hanna (P81462)

Attorney for Plaintiff